

APPEAL NO. 022844
FILED DECEMBER 18, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held in two sessions on June 11, 2002, and October 10, 2002. With respect to the issues before him, the hearing officer determined that the appellant's (claimant) impairment rating (IR) is 10% as certified by the designated doctor selected by the Texas Workers' Compensation Commission (Commission) in his amended report. In his appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's IR and asks that we determine his IR in accordance with the report of Dr. B, his treating doctor. In its response, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable pulmonary injury on _____; that the claimant reached maximum medical improvement (MMI) on December 6, 2001; and that Dr. P is the designated doctor selected by the Commission. The hearing officer did not err in determining that the great weight of the other medical evidence is not contrary to the amended report of the designated doctor, thus the hearing officer properly determined that the claimant's IR is 10%. The date of MMI and the IR are questions of fact. The hearing officer is the sole judge of the relevance, materiality, weight and credibility of the evidence offered. Section 410.165(a). As the finder of fact, the hearing officer is required to resolve the conflicts in the evidence, including the medical evidence. Texas Employers Ins. Co. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). In this instance, the difference between the IRs of Dr. P and Dr. B is attributable to a difference in medical opinion as to the appropriate class of respiratory impairment to assign to the claimant under Table 8 of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000). The statute gives presumptive weight to the designated doctor's reconciliation of such a difference. See Sections 408.122(c) and 408.125(e). The opinion of the treating doctor on the issues of IR simply does not rise to the level of the great weight of the medical evidence contrary to the designated doctor's report. As such, the hearing officer did not err in giving presumptive weight to the designated doctor's certification and determining that the claimant's IR is 10%.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ARGONAUT SOUTHWEST INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JOSEPH A. YURKOVICH
1431 GREENWAY DRIVE, SUITE 450
IRVING, TEXAS 75038.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge